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July 8, 1998

The Honorable John Huppenthal
Arizona State Senate
Capitol Complex, Senate Wing
Phoenix, Arizona 85007-4178

Re: I98-005 (R98-006)

Dear Senator Huppenthal:

This letter responds to your request for an opinion regarding the constitutionality of Arizona Revised Statutes Annotated ("A.R.S.") § 13-3112, which requires persons who wish to carry a concealed weapon to first attend a training class and obtain a concealed-weapons permit. We conclude that A.R.S. § 13-3112 is constitutional because the permit requirement (including the training requirement) is a reasonable regulation granting an exception to an otherwise constitutional law prohibiting the carrying of concealed weapons.

Background

Article II, § 26 of the Arizona Constitution provides that "[t]he right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men." Since adoption of the Arizona Constitution, the Legislature has passed a number of laws regulating the right to bear arms.¹ See, e.g., A.R.S. §§ 13-3102, -3105, -3111, -3112, and -3113. Your inquiry requires consideration of the constitutionality of

¹ Arizona prohibited carrying concealed weapons both immediately before and after adopting the Arizona Constitution. The 1901 Penal Code of the Arizona Territory and the 1913 Arizona Penal Code both provided "[i]t shall be unlawful for any person (except a peace officer in actual service and discharge of his duty), to have or carry concealed on or about his person, any pistol or other firearm. . . ." A.R.S., Penal Code, Title XII, § 426 (1913); Revised Statutes of Arizona Territory, Penal Code, Title XI, § 382 (1901). See also *State v. Moerman*, 182 Ariz. 255, 259, 895 P.2d 1018, 1022 (App. 1994) (discussing the status of the right to bear arms at Arizona's Constitutional Convention).

A.R.S. § 13-3112, which grants an exception to the prohibition against carrying concealed weapons for persons who have obtained a concealed-weapons permit.

Analysis

We will first address the constitutionality of § 13-3102, the concealed weapons law, which states, in pertinent part, that:

- A. A person commits misconduct involving weapons by knowingly:
1. Carrying a deadly weapon without a permit pursuant to § 13-3112 except a pocket knife concealed on his person; or
 2. Carrying a deadly weapon without a permit pursuant to § 13-3112 concealed within immediate control of any person in or on a means of transportation. . . .

The Arizona Court of Appeals has twice upheld the constitutionality of A.R.S. § 13-3102, and the Arizona Supreme Court denied review in both cases. *See State v. Moerman*, 182 Ariz. 255, 259, 895 P.2d 1018, 1022 (App. 1994), *review denied* May 23, 1995; *Dano v. Collins*, 166 Ariz. 322, 325, 802 P.2d 1021, 1024 (App. 1990), *review granted* Jan. 15, 1991, but *review dismissed by Dano v. Collins*, 167 Ariz. 535, 809 P.2d 960 (1991). Both opinions noted that the Arizona Constitution² provides a qualified right to bear arms, not an absolute right. *See Moerman*, 182 Ariz. at 259, 895 P.2d at 1022 ("we note that Article II, section 26 itself provides not an absolute right, but instead a qualified one. . . . Indeed, its very language suggests that people do not have the right to bear arms in any manner and under all circumstances in Arizona"); *Dano*, 166 Ariz. at 323-24, 802 P.2d at 1022 ("[w]e do not read the Arizona constitutional provision as granting an absolute right to bear arms under all situations"). Requiring an individual to carry weapons openly does not impair the individual's Arizona constitutional right to bear arms. *Dano*, 166 Ariz. at 323, 802 P.2d at 1022. Thus, there is no doubt that A.R.S. § 13-3102 is constitutional.

There are no Arizona opinions expressly addressing the constitutionality of A.R.S. § 13-3112, the statute allowing citizens to obtain a concealed-weapon permit:

² Arizona's constitutional right-to-bear-arms provision is identical to language in the State of Washington's Constitution. *Cf.* ARIZ. CONST. art. II, § 26 and WASH CONST. art. I, § 24. Thus, Washington's interpretation of this provision is "very persuasive, if not binding, on us if the construction is reasonable. . . ." *Arizona Eastern R. Co. v. Hinton*, 20 Ariz. 266, 268, 179 P. 963, 963 (1919). Washington courts have held that the right to bear arms "is subject to reasonable regulation by the State under its police power." *State v. Krantz*, 164 P.2d 453, 454 (Wash. 1945); *see also Morris v. Blaker*, 821 P.2d 482, 488 (Wash. 1992).

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The department of public safety shall issue a permit to carry a concealed weapon to a person who is qualified under this section. The person shall carry the permit at all times when the person is in actual possession of the concealed weapon and shall present the permit for inspection to any law enforcement officer on request.

A.R.S. § 13-3112(A). To obtain a permit, an applicant must satisfy certain prerequisites, including successful completion of a firearms safety program. A.R.S. § 13-3112(E)(6).

The police power of the state permits the Legislature to impose reasonable regulatory controls over the state constitutional right to bear arms, in order to promote the safety and welfare of its citizens. *Dano*, 166 Ariz. at 324, 802 P.2d at 1023. *Dano* cites *People v. McFadden*, 188 N.W.2d 141, 144 (Mich. App. 1971), which upheld a Michigan statute requiring a license to carry a concealed weapon. See also *Matthews v. State*, 148 N.E.2d 334, 337 (Ind. 1958) (upholding legislative delegation to licensing officer of authority to determine standard of fitness, character, and reputation necessary to require issuance of a license); *Grimm v. City of New York*, 289 N.Y.S.2d 358, 361-63 (N.Y. Sup. Ct. 1968) (police power supported licensing requirement to exclude persons of certain specified disabilities).

Moreover, if the Legislature can completely prohibit the carrying of concealed weapons, it follows that it may create an exception to the prohibition for persons who have obtained a permit after completing firearms training. The power to prohibit an activity necessarily encompasses the power to regulate it. For example, in *Garcia v. Arizona State Liquor Board*, 21 Ariz. App. 456, 460, 520 P.2d 852, 856 (1974), the court of appeals, after noting that the Legislature has the absolute power to prohibit traffic in intoxicating liquors, found that the Legislature had a reasonable basis to regulate private clubs differently from public liquor establishments. 21 Ariz. App. at 461, 520 P.2d at 857. As discussed previously, the Legislature can completely prohibit the carrying of concealed weapons, as it can completely prohibit traffic in alcohol. Similarly, if the Legislature may allow traffic in alcohol, but regulate the terms of such activity, it follows that the Legislature may allow persons to carry concealed weapons, but regulate the terms of such activity.

The Legislature has determined that concealed weapons are a danger to the citizenry of Arizona. *Moerman*, 182 Ariz. at 259, 895 P.2d at 1022; *Dano*, 166 Ariz. at 324, 802 P.2d at 1023. The Legislature has also determined, however, that the danger is sufficiently diminished if persons are licensed to carry concealed weapons after meeting certain conditions, including successfully completing a firearms safety class. The courts will acquiesce in legislative determinations of fact unless they are clearly erroneous, arbitrary, or wholly unwarranted. *McKinley v. Reilly*, 96 Ariz. 176, 179, 393 P.2d 268, 270 (1964).

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As a condition for obtaining a permit to carry a concealed weapon, the Legislature has mandated that the person complete a firearms training class so that the person is knowledgeable about the use of the weapon. This class must include instruction on:

- (a) Legal issues relating to the use of deadly force.
- (b) Weapon care and maintenance.
- (c) Mental conditioning for the use of deadly force.
- (d) Safe handling and storage of weapons.
- (e) Marksmanship.
- (f) Judgmental shooting.

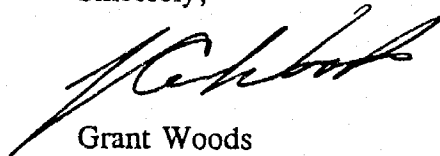
A.R.S. § 13-3112(N)(3). It is certainly reasonable to assume that one who completes such a course, and is thereafter permitted to carry a concealed weapon, will be less dangerous to the public than a person who carries a concealed weapon without the benefit of the course. Indeed, courts of other states have upheld licensing requirements intended to prevent the misuse of guns by individuals who are unskilled or unqualified. *See generally*, Danny J. Veilleux, Annotation, *Validity of State Gun Control Legislation Under State Constitutional Provisions Securing the Right to Bear Arms*, 86 A.L.R.4th 931, 942 (1991). The Legislature's factual determination that a firearms safety training program will help to prevent the misuse of concealed weapons by individuals who are unskilled or unqualified to carry such weapons, is not clearly erroneous, arbitrary, or wholly unwarranted. *McKinley*, 96 Ariz. at 179, 393 P.2d at 270.

Accordingly, A.R.S. § 13-3112 is a reasonable exercise of the State's police power and is constitutional.

Conclusion

We conclude that A.R.S. § 13-3112, which requires persons who wish to carry a concealed weapon to first attend a training class and obtain a concealed weapon permit, is constitutional.

Sincerely,



Grant Woods
Attorney General